



Fit for Purpose? Evaluating the EU's Assistance to Ukraine

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Introduction¹

Ukraine opted for closer economic and political ties with the European Union (EU) when it signed an Association Agreement (AA) in 2014. The agreement, which includes a Deep and Comprehensive Free Trade Area (DCFTA), is a bilateral agreement that regulates relations between the EU and Ukraine; it also contains a free-trade area. The agreement covers a large swathe of the EU *acquis* – the accumulated body of acts and court decisions that constitute EU law. As well as removing (or lowering) tariffs and quotas, the AA-DCFTA will lead to the alignment of Ukraine's regulatory frameworks with those of the EU.² This process of 'legal approximation', whereby EU rules are incorporated into national laws and institutions are created or reformed to administer those rules, is often viewed as a technocratic, 'low-politics' process. However, it does require strong functioning institutions to enact a plethora of commitments, something that Ukraine has yet to develop. As it is, the AA commitments exceed Ukraine's capacity to implement them. In recognition of this, the EU has stepped up its assistance to Ukraine since 2014. This paper will provide an overview of the support provided by the EU since 2014 with a view to assessing its effectiveness.

Evidence and Analysis

The signing of the AA and DCFTA between the EU and Ukraine in June 2014 represented a step-change in relations. However, the AA was negotiated between the EU and Ukraine on the assumption that Ukraine had weak but nevertheless functioning state institutions that merely needed some assistance to perform more effectively. This was far from the case. Following the collapse of the Soviet Union, while Ukraine's state institutions remained intact, state capture by powerful oligarchs, who gained access to levers of power, blocked reforms that were unfavourable to their interests. Indeed, Ukrainian officials who negotiated the AA between 2007 and 2011 had as one of their aims the opening of the country to external influence to thereby force the implementation of long-overdue reforms.

Up until 2013, the international assistance in general, and EU assistance in particular, was insufficiently geared towards addressing the fundamental problems facing Ukrainian state institutions. This changed in 2014 with the signing of the AA, when the EU recognized these challenges and reformed many aspects of its assistance accordingly. It has focused particularly on the reform-oriented dimension of its policies.

Innovations

The Support Group for Ukraine

One significant innovation occurred with the establishment of the Support Group for Ukraine (SGUA) by the President of the European Commission in April 2014. This body was to act as a 'catalyst, facilitator and supporter of reforms'.³ Among EU institutions, it is the main coordinating body for assistance to Ukraine across various

¹ This policy brief builds on EU-STRAT research and summarizes more extensive research conducted by the two co-authors, which has been published by Chatham House and is available at: <https://www.chathamhouse.org/publication/rebuilding-ukraine-assessing-eu-assistance-ukraine>.

² For a compact and accessible analysis of the AA-DCFTA, see Emerson, M. and Movchan, V. (eds) (2018) *Deepening EU-Ukrainian Relations: What, why and how?*, London: Rowman and Littlefield International.

³ European Commission (2016) 'Support Group of Ukraine. Activity Report. The First 18 Months'.

directorates-general in the European Commission and European External Action Service. At the same time, SGUA experts have gained detailed knowledge of specific sectors in Ukraine. Some of the officials are based in the country as part of the operational section of the EU delegation. The SGUA also coordinates the efforts of other European and international donors. As a result, it is able to liaise with various parts of the Commission (such as the directorates-general for trade and energy) to identify the country's needs and tailor assistance accordingly. The SGUA focuses on state-building issues (e.g. justice and anti-corruption), as well as on the strategic coordination and programming of assistance. These are precisely the areas that had been underdeveloped until 2014.

As of mid-2017, there were about 260 projects ongoing in the country that were funded by the EU and its member states. However, some sectors are inundated with international support, which can lead to overlap and duplication of efforts, whereas others, such as healthcare, receive relatively little assistance. Without proper coordination, it can be difficult for the EU to promote coherent sector-wide reforms when other donors favour a different reform strategy. The presence of other donors may also make it more difficult for the EU to adopt a more assertive position *vis-à-vis* the beneficiary institutions, as there is an element of competition.

The SGUA tailored its assistance and expertise and focused it on strengthening state capacity rather than merely facilitating legal approximation. In addition, the SGUA has mediated between Kyiv and Brussels by helping the Ukrainian authorities to access the relevant directorates of the European Commission. However, the Commission's staff can only devote limited attention to Ukraine, given their wide responsibilities.

In the complex institutional context of the EU, the SGUA plays a central role in building 'local knowledge' – that is, a deep understanding of how Ukraine works in terms of its institutional framework, sector-wide problems, key stakeholders and assistance provided by other donors. This type of knowledge is indispensable for designing and delivering effective assistance. Furthermore, it is particularly useful in such countries as Ukraine, where informal practices – pervasive even in formal institutions – often result in extensive rent extraction. Every sector has its vested interests and reform blockers, which so-called 'reform coalitions' need to overcome.⁴ Local knowledge is required to inform the active oversight of individual technical assistance projects, both by SGUA staff and operational staff from the EU delegation. Presently many of these projects are overseen only by the EU delegation, without sufficient attention from the SGUA.⁵

Hiring staff to reform institutions

Given the weakness of the state, another important innovation has been supporting the creation of 'reform posts' in the government, as the reform process in 2014–17 was largely driven by *ad hoc* teams of 'quiet' reformers, mainly located in middle-level positions within the government. To address this, the Public Administration Reform (PAR) strategy was created. After the government approved the PAR strategy in 2016, and after extensive deliberation, the European Commission announced a €90 million programme to assist its implementation, with the first €10 million disbursed soon after. This type of budget support for PAR allowed the government to pay higher salaries for up to 2,000 'reform posts', the intention being that it continues supporting

⁴ See Ash, T., Gunn, J., Lough, J., Lutsevych, O., Nixey, J., Sherr, J. and Wolczuk, K. (2017) *The Struggle for Ukraine*, Chatham House Report, London: Royal Institute of International Affairs.

⁵ Few staff members of the SGUA are already based in the EU delegation in Kyiv.

these positions until a time when the anticipated savings from reforms themselves enable salaries to be fully financed from the domestic budget.⁶

Following a highly competitive selection procedure with input from EU experts, several hundreds of civil servants were recruited into reform posts by early 2019. The officials are mostly employed in the newly created Strategic Planning and Policy Coordination Departments⁷ and Policy Directorates in the line ministries. According to participants on both sides of the selection process, the quality of the intake so far has been relatively high, with new recruits as well as already employed civil servants moving to higher-paid posts with wider responsibilities.⁸ There are justifiable concerns that the scheme could in effect result in a two-tier civil service – in which pay differences undermine morale – but no better idea has yet emerged for bringing dedicated reformers into the government.

Scaling down budgetary support

Ukraine received €344 million in aid across six areas (energy strategy, energy efficiency, trade, environment, transport and border protection) between 2008 and 2014. Budget support was nominally tied to progress in reforms, but this conditionality was not successful.⁹ Indeed, the EU was soon criticized for its lax approach. Owing to its limited effectiveness, budget support was scaled down by 2014. What remained was used only for removing technical barriers to trade between Ukraine and the EU, and for supporting transport, environmental and border-management policies. By 2017, these programmes had expired. EU budgetary support continues only for the Energy Strategy of Ukraine (an energy efficiency project), and is scheduled to run until May 2020.

Delegated agreements

Since 2014, the EU has introduced 'delegated agreements'. These are resource programmes implemented by development agencies of EU member states.¹⁰ What makes these agreements innovative is the more proactive way in which they enable the identification and deployment of member states' relevant expertise, and how they support more flexible, needs-based implementation. These delegated agreements speed up award allocation procedures, allow for longer term projects, introduce needs-driven flexibility in implementation, and combine support instruments (for example, investment, technical assistance and twinning). Moreover, they benefit from the experience of member states with a record of addressing policy and reform issues.

The first €90 million package was provided at the end of 2015, targeting administrative decentralization (the reforms also included the improvement of local administrative services). The programme was principally implemented by the development agencies of Germany and Sweden, with Poland's development agency playing a minor role. In 2017, a €16 million anti-corruption programme started, implemented by Denmark's development

⁶ Directors of departments may expect monthly remuneration to be in the region of €2,000, while experts can earn about €1,000 and heads of groups of experts earn somewhere in between.

⁷ Coordination of European integration activities falls within their remit, among other functions.

⁸ Interviews with officials in the Ministries of Justice and Finance, and the Secretariat of the Cabinet of Ministers, Kyiv, November 2017.

⁹ See Open Society Foundation (2014) 'Report on Budget Support Provided to Moldova, Georgia and Ukraine', available at http://archive.eap-csf.eu/assets/files/WG1_EU%20Budget%20support_last_en.pdf (accessed 12 June 2018).

¹⁰ This approach has previously been used for the EU's assistance to other regions of the world, notably Africa.

agency.¹¹ Several other programmes have been launched, including Support Rule of Law Reforms in Ukraine (PRAVO) for judiciary and law enforcement.

The broader sectoral experience of staff from developmental agencies of EU member states and the flexibility of the delegated agreements are improving the effectiveness of assistance to Ukraine. However, managing such large programmes is challenging. The complexity of the different programmes creates risks of duplication or fragmentation unless there is tight central control and oversight.¹² Ongoing fine-tuning of these programmes is required in order for them to succeed.

Macro-financial assistance

Another EU innovation has been macroeconomic assistance. Building on two earlier programmes, the EU offered a further €1.8 billion in macro-financial assistance to Ukraine in 2015. This was to ease the country's urgent external financial obligations, alleviate its balance of payments and budgetary needs, and strengthen its foreign exchange reserves. The assistance consisted of three equal tranches of €600 million, subject to Ukraine fulfilling certain conditions. The Memorandum of Understanding between the EU and Ukraine includes a list of structural reform policy measures that the government committed itself to implementing in order to receive the second and third instalments of assistance. The measures required to qualify for the second tranche include 12 key aspects of reforms ranging from fiscal governance to public administration, while the third tranche is conditional upon deepening the reforms in these areas.¹³

The first tranche was paid in 2015 but the second was delayed because the government did not satisfy the agreed implementation conditions. The Ukrainian government introduced a wood export ban that breached the Memorandum of Understanding, which stipulated that Ukraine should refrain from implementing new trade-restricting measures. Nevertheless, the EU agreed to release the second tranche in 2017, as otherwise the funds would have been re-directed to other EU priorities. This sent the wrong signal as it implied that the EU was satisfied with the reform work of Ukraine's leadership. It also negated the EU's efforts to use macro-financial conditionality to exert pressure on the government. The EU, however, refused to disperse the third tranche in November 2017, due to Ukraine's continued breach of several conditions. Soon after, the government requested additional macro-financial assistance, which the EU promised to deliver on the condition that Ukraine's International Monetary Fund (IMF) programme remains on track. If and when a fourth macro-financial assistance programme is approved, it should be accompanied by more strategic and tailored conditionality.

¹¹ €15 million from the EU funds and €1.34 million from Denmark. See European Commission (2017) 'EU and Denmark launch Euro 16 million EU Anti-Corruption Initiative in Ukraine', Press Release, 1 February 2017, available at https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/eu-and-denmark-launch-euro-16-million-eu-anti-corruption-initiative-ukraine_en (accessed 12 June 2018).

¹² Interviews with DG NEAR and European External Action Service (EEAS) officials in Kyiv.

¹³ Memorandum of Understanding between the European Union and Ukraine (2015) 'Macro-Financial Assistance for Ukraine, Loan Facility from the European Union of up to 1.8 billion EUR', 22 May 2015, Riga, available at <https://www.eurointegration.com.ua/files/d/4/d42bb98-mfa.pdf> (accessed 31 July 2017).

Technical assistance and its limits¹⁴

DG NEAR and the SGUA have increased the effectiveness of EU funding for Ukraine primarily through identifying needs and offering more targeted assistance for state-building. However, there is still room for further improvements with regard to technical assistance, which remains an important mode of support.

Technical assistance typically takes the form of relatively short-term (1–3 years), pre-scripted projects, which are carried out by short- and long-term experts. The terms of such projects specify priorities, deliverables, timelines and a line-up of experts in a detailed and prescriptive way. Twinning projects similarly involve EU experts from member states' peer institutions providing advice to beneficiary institutions in Ukraine.

Aid in support of state-building reforms and the implementation of the AA-DCFTA relies heavily on technical cooperation. As of late 2017, the EU was implementing €50 million worth of technical assistance and twinning projects in Ukraine. The number of projects has since increased. By mid-2018, 42 twinning projects had been completed in Ukraine, while 12 were under way and 10 were at the preparation stage; on average they are each estimated to be worth around €1 million to €2 million.¹⁵ Given the weakness of state administration, these projects are important as they often offer the only chance to advance legal approximation and capacity-building. Some projects, such as the funding for a business ombudsman, also contribute to the emergence of trust among economic actors, government institutions and the donor community.

However, the majority of these technical assistance projects frequently encounter challenges due to their prescriptive, rigid design.¹⁶ They rarely seek to devise a solution that is tailored to local circumstances.¹⁷ ¹⁸ Three problems have been evident for a considerable time. First, most of the EU's technical assistance focuses on existing state institutions with entrenched practices and often, even the projects aimed at capacity-building, struggle with their limited 'absorption capacity'. Second, a persuasive body of evidence shows that 'capacity and technical knowledge alone are insufficient to change deeply entrenched political interests and bureaucratic norms'¹⁹. Third, international projects targeted at inadequately paid civil servants actually result in a 'brain drain' from public administration.

¹⁴ We are most grateful to Dr. Duncan Leitch for providing essential input to this section based on his extensive experience of working in Ukraine and his publications, including Leitch, D. (2016) *Assisting Reform in Post-Communist Ukraine, 2000–2012: The Illusions of Donors and the Disillusion of Beneficiaries*, Hannover, Germany: ibidem Press.

¹⁵ Data from a presentation by the director of the Centre for Adaptation of the Civil Service to the Standards of the European Union, Maryna Kanavets, on 'Implementation of Twinning, TAIEX Instruments and Sigma programme in Ukraine' during an EaP meeting on institution-building in Kyiv, 7–8 December 2017, available at <http://www.center.gov.ua/en/press-center/news/item/2754-annual-regional-conference-on-institution-building> -> Presentations -> 4_0_M.KANAVETS_2017_1.pdf (accessed 12 June 2018).

¹⁶ Leitch, D. (2016) *Assisting Reform in Post-Communist Ukraine, 2000–2012: The Illusions of Donors and the Disillusion of Beneficiaries*, Hannover, Germany: ibidem Press. See also Leitch, D. (2018) 'Leaving like an Englishman: Assisting Institutional Reform in Post-Communist Ukraine', *Development Policy Review* 37(1): 111-128.

¹⁷ Terms of reference for EU projects in Ukraine typically contain objectives such as 'the alignment of Ukrainian asylum and migration management with EU and international standards and best practices'. Delegation of the European Union to Ukraine (2016) 'EU Projects in Ukraine, Overview', Raising Awareness of Migration Management, available at https://eeas.europa.eu/delegations/ukraine/1938/eu-projects-ukraine_en (accessed 12 June 2018).

¹⁸ Leitch, D. (2016) *Assisting Reform in Post-Communist Ukraine, 2000–2012: The Illusions of Donors and the Disillusion of Beneficiaries*, Hannover, Germany: ibidem Press, p. 148.

¹⁹ Teskey, G. (2017) 'Thinking and Working Politically: are we seeing the emergence of a second orthodoxy?', Abt Associates, p. 3, available at <http://www.abtassociates.com/White-Papers/2017/Paper-Thinking-and-Working-Politically---Are-We-See.aspx> (accessed 12 June 2018).

A glimpse at EU technical assistance projects in Ukraine in three areas – civil society development, governance and regional development – demonstrates the prevalence of a short-term approach. Most of the 46 EU projects²⁰ lasted for either two years (12) or three years (20), nine lasted for four years and five for just a year.²¹ By contrast, two other major donors providing technical assistance to Ukraine in these areas run much longer projects. USAID lists seven projects in the governance/anti-corruption field, six of which will run for five years.²² The Canadian government currently has one major project on regional policy in Ukraine, which is also due to last six years.²³

For nearly three decades, EU assistance to Ukraine has had limited sustainability (long-standing impact) once projects have concluded. There is much discontinuity and a tendency to ‘reinvent the wheel’ by various consultancy companies bidding for projects. For example, the EU delegation has an internal document management system, which relies on project managers to upload project-related documentation; this is not done consistently. Nor are these materials routinely reviewed when new projects are planned. Furthermore, this document management system is not a publicly accessible depository.²⁴ As a result of these various factors, new projects must start from scratch and face the same problems that affected their predecessors.²⁵

Policy Implications

The EU is the biggest donor to Ukraine. Since 2014, EU institutions and member states have stepped up their support. Ukraine’s demand for better governance has been met with a strategic, tailored and dynamic approach from the EU.

As a result, Ukraine stands out among the Eastern Partnership countries in having tailored and flexible support for state-building and for implementing the AA-DCFTA. Since the Revolution of Dignity, the EU has responded to the country’s needs in a concerted and innovative way, such as through the SGUA, macro-financial assistance and by providing fiscal space for reform teams of civil servants. These are important adaptations to how the EU usually assists a third country.

However, there is also much continuity, especially with regard to technical assistance, despite its ineffectiveness. The case of Ukraine is merely indicative of the structural shortcomings in this process-oriented approach, which is devoid of flexibility and sensitivity to the local context. Notwithstanding its innovations, much of the EU’s support to Ukraine and other Eastern Partnership countries continues to rely on unreformed technical assistance. For too long, unwarranted assumptions have underpinned the EU’s assistance, such as the idea that training alone is enough to improve dysfunctional institutions. New institutions and broader capacity need to be created

²⁰ Some projects or components of projects appear more than once on the website lists but are counted as a single project here.

²¹ However, it is possible that one-year projects may be extensions/continuations of existing programmes. See, Delegation of the European Union to Ukraine (2016) ‘EU Projects in Ukraine, Overview’, available at https://eeas.europa.eu/delegations/ukraine/1938/eu-projects-ukraine_en (accessed 12 June 2018).

²² None of USAID’s four projects on civil society lasts less than five years, and one is for six years. USAID (nd) ‘Ukraine: Democracy, Human Rights and Governance’, available at <https://www.usaid.gov/ukraine/democracy-human-rights-and-governance> (accessed 12 June 2018).

²³ Partnership for Local Economic Development and Democratic Governance (PLEDDG) (nd) available at <http://pleddg.org.ua/en/> (accessed 12 June 2018).

²⁴ Interview with former programme manager at the EU delegation in Kyiv, January 2018.

²⁵ The focus here is on the unavailability of impact assessment studies that have been conducted already. However, there are also not enough studies of this type.

in order for these countries to devise effective public policies and implement the AA. An overhaul of the EU's technical assistance in general is long overdue.

Recommendations

1. The Support Group for Ukraine's size, capacity and mandate should be strengthened so that it can work productively with the EU delegation and improve effective implementation of projects and programmes.
2. The EU's grant assistance, especially for institution-building and sectoral reforms, should meet the following criteria:
 - It should only be given conditionally to carefully screened and designed projects. Reformers with a proven track record (including ex-government officials) must be involved.
 - It should be less prescriptive. This means addressing Ukraine's specific problems rather than relying on terms of reference written by experts who are unfamiliar with the country context and who favour 'best practice'.
 - Transfer of 'best practice' models should be restricted to technical programmes where the beneficiary institutions recognize and favour harmonization with specific EU rules or procedures.
 - Institution-building projects need to be less ambitious and granted a longer implementation period. The default period for implementation should be at least five years, in line with examples of other major donors.
 - Such projects need to be less extensive and more intensive, with less focus on outputs and more on outcomes.
 - Assistance needs to be problem-driven and solution-focused to help solve the most urgent needs of institutions, and not be merely focused on training and the transfer of generic good practices.
 - The assistance needs to be longer-term and combined with other forms of support. This should be bolstered by an effective project information centre.
 - A premium should be placed on local knowledge and the capacity of experts to lead and engineer results, instead of focusing on detailed and prescriptive implementation of terms of reference. The selection of project personnel should prioritize those with 'deep knowledge' instead of those who are merely fluent in EU aid rules and procedures.
3. The European Commission and the European External Action Service should be flexible with EU delegations and allow them to pursue results instead of merely focussing on formal disbursement compliance.
4. On the monitoring side, it is time to conduct in-depth sectoral reviews of EU assistance to reforms in Ukraine over the past decade, in order to achieve a deeper understanding of the local context and to learn from past successes and shortcomings.
5. The European Commission should support a cost-benefit (impact) assessment based on the development of sectoral policies for integrating Ukraine into the EU and for building institutions to implement those policies. The European Commission should tie its assistance to implementation.
6. The implementation of the AA-DCFTA needs to be based on impact assessment studies in order to be realistic and pragmatic. Its technical components should take into account a wider spectrum of interests surrounding reforms during implementation.



The EU and Eastern Partnership Countries An Inside-Out Analysis and Strategic Assessment

Against the background of the war in Ukraine and the rising tensions with Russia, a reassessment of the European Neighborhood Policy has become both more urgent and more challenging. Adopting an inside-out perspective on the challenges of transformation the Eastern Partnership (EaP) countries and the European Union face, the research project EU-STRAT seeks to understand varieties of social orders in EaP countries and to explain the propensity of domestic actors to engage in change. EU-STRAT also investigates how bilateral, regional and global interdependencies shape domestic actors' preferences and scope of action. Featuring an eleven-partner consortium of academic, policy, and management excellence, EU-STRAT creates new and strengthens existing links within and between the academic and the policy world on matters relating to current and future relations with EaP countries.
